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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
KOLO, LLC,	:	
	:	
Plaintiff,	:	
	:	07 Civ. 10653 (CM)
v.	:	
	:	
	:	
KATE'S PAPERIE, LTD.,	:	<u>ANSWER TO CAUSES FIFTH, SIXTH,</u>
	:	<u>SEVENTH, EIGHTH, AND TENTH OF THE</u>
	:	<u>COMPLAINT</u>
Defendant.	:	
-----	X	

Defendant Kate's Paperie, Ltd. ("Kate's," or "Defendant") by its undersigned attorneys,
for its Answer to the Complaint of Kolo, LLC ("Plaintiff") states as follows:

**ANSWER TO CAUSES FIFTH, SIXTH, SEVENTH,
EIGHTH AND TENTH OF THE COMPLAINT**

PARTIES

1. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation of paragraph 1 of the Complaint.
2. Admits the allegations set forth in paragraph 2 of the Complaint except denies that Defendant's principal business is located at 1633 Broadway, New York, New York 10019,

and avers that Defendant's principal business location is 460 West 34th Street, New York, New York 10001.

3. Admits the allegations set forth in paragraph 3 of the Complaint.

4. Denies the allegations set forth in paragraph 4 of the Complaint and avers that on or about August 2, 2007 the parties executed a Letter of Intent (hereinafter "Letter of Intent") that by its terms is not a binding agreement or contract.

JURISDICTION

5. Kate's lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Complaint, and so denies those allegations on that basis.

6. Admits upon information and belief that the Court has proper jurisdiction over this action.

7. Admits that venue is proper within this District.

BACKGROUND

8. Denies the allegations set forth in paragraph 8 of the Complaint, and to the extent the allegations in paragraph 8 relate to the Letter of Intent Defendant respectfully refers the Court to the contents thereof.

9. Denies the allegations set forth in paragraph 9 of the Complaint, and to the extent the allegations in paragraph 9 relate to the Letter of Intent Defendant respectfully refers the Court to the contents thereof.

10. Denies the allegations set forth in paragraph 10 of the Complaint, and to the extent the allegations in paragraph 10 relate to the Letter of Intent Defendant respectfully refers the Court to the contents thereof.

11. Denies the allegations set forth in paragraph 11 of the Complaint, except admits that Kate's has not assigned to KOLO a 20% interest in Kate's.

12. Denies the allegations set forth in paragraph 12 of the Complaint.

**AS AND FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)**

13 through 20. Kate's has moved to dismiss this cause of action, and thus is under no obligation to respond herein to these allegations at this time.

**AS AND FOR A SECOND CAUSE OF ACTION
(BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING)**

21 through 27. Kate's has moved to dismiss this cause of action, and thus is under no obligation to respond herein to these allegations at this time.

**AS AND FOR A THIRD CAUSE OF ACTION
(PROMISSORY ESTOPPEL)**

28 through 34. Kate's has moved to dismiss this cause of action, and thus is under no obligation to respond herein to these allegations at this time.

**AS AND FOR A FOURTH CAUSE OF ACTION
(BREACH OF IMPLIED CONTRACT)**

35 through 38. Kate's has moved to dismiss this cause of action, and thus is under no obligation to respond herein to these allegations at this time.

**AS AND FOR A FIFTH CAUSE OF ACTION
(BREACH OF CONTRACT)**

39. In response to paragraph 39 of the Complaint, Kate's repeats and realleges paragraphs 1-38 above as if fully set forth herein.

40. Denies the allegations set forth in paragraph 40 of the Complaint.

41. Denies the allegations set forth in paragraph 41 of the Complaint.

42. Denies the allegations set forth in paragraph 42 of the Complaint.

- 43. Denies the allegations set forth in paragraph 43 of the Complaint.
- 44. Denies the allegations set forth in paragraph 44 of the Complaint.
- 45. Denies the allegations set forth in paragraph 45 of the Complaint.
- 46. Denies the allegations set forth in paragraph 46 of the Complaint.
- 47. Denies the allegations set forth in paragraph 47 of the Complaint.
- 48. Denies the allegations set forth in paragraph 48 of the Complaint.
- 49. Denies the allegations set forth in paragraph 49 of the Complaint.
- 50. Denies the allegations set forth in paragraph 50 of the Complaint.
- 51. Denies the allegations set forth in paragraph 51 of the Complaint.
- 52. Denies the allegations set forth in paragraph 52 of the Complaint.
- 53. Denies the allegations set forth in paragraph 53 of the Complaint.

**AS AND FOR A SIXTH CAUSE OF ACTION
(BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING)**

54. In response to paragraph 54 of the Complaint, Kate's repeats and realleges paragraphs 1-53 above as if fully set forth herein.

55. States that no answer is required to the allegations set forth in paragraph 55 because each such allegation is a legal conclusion to which no answer is required, and to the extent that a response is required, denies the allegations.

- 56. Denies the allegations set forth in paragraph 56 of the Complaint.
- 57. Denies the allegations set forth in paragraph 57 of the Complaint.
- 58. Denies the allegations set forth in paragraph 58 of the Complaint.
- 59. Denies the allegations set forth in paragraph 59 of the Complaint.
- 60. Denies the allegations set forth in paragraph 60 of the Complaint.

**AS AND FOR A SEVENTH CAUSE OF ACTION
(PROMISSORY ESTOPPEL)**

61. In response to paragraph 61 of the Complaint, Kate's repeats and realleges paragraphs 1-60 above as if fully set forth herein.

62. Denies the allegations set forth in paragraph 62 of the Complaint.

63. Denies the allegations set forth in paragraph 63 of the Complaint.

64. Denies the allegations set forth in paragraph 64 of the Complaint.

65. Denies the allegations set forth in paragraph 65 of the Complaint.

66. Denies the allegations set forth in paragraph 66 of the Complaint.

67. Denies the allegations set forth in paragraph 67 of the Complaint.

**AS AND FOR AN EIGHTH CAUSE OF ACTION
(BREACH OF IMPLIED CONTRACT)**

68. In response to paragraph 68 of the Complaint, Kate's repeats and realleges paragraphs 1-67 above as if fully set forth herein.

69. Denies the allegations set forth in paragraph 69 of the Complaint.

70. States that no answer is required to the allegations set forth in paragraph 70 because each such allegation is a legal conclusion to which no answer is required, and to the extent that a response is required, denies the allegations.

71. Denies the allegations set forth in paragraph 71 of the Complaint.

**AS AND FOR A NINTH CAUSE OF ACTION
(UNJUST ENRICHMENT)**

72 through 76. Kate's has moved to dismiss this cause of action, and thus is under no obligation to respond herein to these allegations at this time.

**AS AND FOR A TENTH CAUSE OF ACTION
(BREACH OF CONTRACT)**

77. In response to paragraph 77 of the Complaint, Kate's repeats and realleges paragraphs 1-76 above as if fully set forth herein.

78. Denies the allegations set forth in paragraph 78 of the Complaint.

79. Denies the allegations set forth in paragraph 79 of the Complaint.

80. Denies the allegations set forth in paragraph 75 of the Complaint.

DEFENSES AND AFFIRMATIVE DEFENSES

FIRST

The Complaint fails to state a claim upon which relief can be granted.

SECOND

Kolo's claims are barred by the doctrines of estoppel, laches and waiver.

THIRD

Kolo's claims are barred by the doctrine of unclean hands.

FOURTH

Kolo has suffered no damages not sustained as a result of Kolo's own actions.

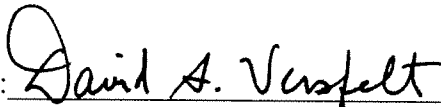
FIFTH

Defendant reserves its right to assert additional defenses and affirmative defenses as they become known to it.

WHEREFORE, Kate's demands judgment dismissing the Complaint with prejudice, together with the costs and disbursements of this action, reasonable attorneys' fees and such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 28, 2007

KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP

By: 
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